

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD AGEE, JR., an individual;
JEROME BENNETT, an individual;
DENNIS LEORY BLACK, JR., an individual;
JAMEE BURBRIDGE, an individual;
BEVERLY ANN BURRELL, an individual;
JEMELL COTTON, an individual; TERESA
DUBOSE, an individual; KAREN
FERGUSON, an individual; MICHELLE
KEEBLE, an individual; NORMA
McDANIEL, an individual; GLENDA
McDONALD, an individual; JANET MARIE
OVERALL, an individual; SHIRLEY L.
RADDEN, an individual; DAVONTE
SHERARD, an individual; MICHELLE T.
SMITH, an individual; KENYETTA SNAPP,
an individual; DONYALE STEPHEN-
ATARA, an individual; and TANESHA
WILSON, an individual,

Plaintiffs,

v

JOCELYN BENSON, in her official capacity
as Secretary of State of Michigan;
MICHIGAN INDEPENDENT
REDISTRICTING COMMISSION;
DOUGLAS CLARK, JUANITA CURRY,
ANTHONY EID, RHONDA LANGE,
STEVEN TERRY LETT, BRITTNI
KELLOM, CYNTHIA ORTON, M.C.
ROTHHORN, REBECCA SZETELA,
JANICE VALLETTE, ERIN WAGNER,
RICHARD WEISS and DUSTIN WITJES, in
their official capacities as Commissioners of
the Michigan Independent Citizens
Redistricting Commission,

Defendants.

No. 1:22-cv-00272

THREE-JUDGE PANEL
APPOINTED PURSUANT TO 28
U.S.C. § 2284(a)

**DEFENDANT MICHIGAN
SECRETARY OF STATE
JOCELYN BENSON'S
POST-TRIAL BRIEF**

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**DEFENDANT MICHIGAN SECRETARY OF STATE JOCELYN BENSON'S
POST-TRIAL BRIEF**

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Dated: December 4, 2023

INTRODUCTION

Plaintiffs have asked this Court to declare that certain state house and senate redistricting plans violate the Voting Rights Act and the Fourteenth Amendment and presumably to order Michigan's Independent Citizens Redistricting Commission (Commission) to redraw and adopt new plans. Because the Secretary of State's only role with respect to the plans is administrative, she takes no position with respect to the constitutionality of the plans or the merits of Plaintiffs' claims and presented no evidence or arguments during the trial. But if the Court ultimately orders new plans be drawn and adopted, the Secretary will perform her administrative duties as required by Michigan law and consistent with any actions taken by the Commission in compliance with this Court's order.

For the convenience of the Court, the Secretary takes this opportunity to again summarize the process for implementing changes to maps, as well as pertinent deadlines for upcoming elections. Finally, the Secretary reiterates her position that if the Court grants summary judgment in favor of the Commission, it should likewise grant judgment in favor of the Secretary.

A. The Secretary of State's process for updating maps.

The Michigan Bureau of Elections, housed within the Department of State, maintains the state's qualified voter file (QVF), which is an electronic list of all registered voters in the state—currently over eight million people. Mich. Comp. Laws § 168.509o. For each voter, the QVF contains the list of all districts in which a voter lives, i.e., federal and state house and senate districts, as well as county,

city, and school board districts, etc., which is used, among other things, to determine what ballot a voter receives. Mich. Comp. Laws § 168.509q. The QVF also includes a “street index” of addresses for all registered voters in the state. Mich. Comp. Laws § 168.509p(d). After new maps are adopted by the Commission, the Bureau must update the QVF.

The update generally takes place in three phases. In phase one, the new district lines are added to the QVF. In phase two, the “street index” is reviewed to identify where districts have changed, and an update to registrations is made where voters’ districts have changed. And in the third and final phase, the Bureau of Elections in collaboration with the over 1,500 local clerks manually reviews and modifies voting precincts, as necessary. *See*, Mich. Comp. Laws §§ 168.654a, 168.661.

The updates to the QVF generally need to be completed in time to accommodate candidates seeking to run in the relevant primary election cycle. Shortly after the Commission adopted the plans in December 2021, the Bureau began working to update the QVF. Following the phases outlined above, the Bureau updated the QVF with the new districts in time to meet the April 2022, filing deadline for candidates seeking to access the ballot for the August 2022 primary election. The Bureau was able to accomplish this process in about four months after receiving the Commission’s final approved maps.

B. Upcoming elections and deadlines

Michigan will hold a special election primary for Michigan House Districts 13 and 25 on January 30, 2024. The filing deadline for candidates seeking to run in the special primary passed at 4 p.m. on November 27, 2023. The special general election for those House Districts will be held on April 16, 2024.¹

In between those elections, the State will conduct its presidential primary election on February 27, 2024. *See* 2023 PA 2, amending Mich. Comp. Laws § 168.613a. The next regularly scheduled election that will involve the Michigan House or Senate will be the August 6, 2024, primary election, which will include House candidates given their two-year terms. *See* Mich. Comp. Laws §§ 168.3(l); 168.641(1)(b), (2); 168.643.² The filing deadline for House candidates seeking to access the August primary election will be April 23, 2024 (the 15th Tuesday before the election). Mich. Comp. Laws § 168.163.³ After the primary, the general election will be held on November 5, 2024.⁴

¹ *See* Special Election Duties and Deadlines, available at [2024 Special Election Dates and Duties \(michigan.gov\)](https://www.michigan.gov/elections/2024-special-election-dates-and-duties) (accessed December 4, 2023).

² The Michigan House and Senate will both be up for election in 2026. Unless changes to the Michigan Election Law occur, the filing deadline for the primary will be in April of 2026 and the primary will be held in August of 2026.

³ House candidates may access the primary ballot by simply paying a filing fee, rather than circulating nominating petitions signed by voters within the district. Mich. Comp. Law § 168.163.

⁴ *See* August – November 2024 Election Dates, available at [Election Calendar of Dates \(michigan.gov\)](https://www.michigan.gov/elections/2024-election-dates) (accessed December 4, 2023).

Beyond filing deadlines, there are numerous other duties that must be performed and deadlines to be met in the weeks leading up to the August 2024 primary. The Secretary must certify primary candidates to the county clerks by June 4, 2024. Mich. Comp. Laws § 168.552(14). Clerks must electronically transmit or mail absent voter ballots to uniformed services or overseas voters no later than June 22, 2024. Mich. Comp. Laws § 168.759a; Mich. Const. 1963, Art. 2, §4. On that same day, county clerks must deliver absent voter ballots for the August primary to local clerks. Mich. Comp. Laws § 168.714. Early voting for the August primary begins on July 7, 2024. Mich. Comp. Laws § 168.720e.

The Secretary recognizes that this Court has yet to rule on the merits of Plaintiffs' claims, and that her concerns may ultimately be of no consequence. But given that the April 23, 2024 filing deadline is about 4½ months away and that it would take time for the Commission to draw new maps, the window for granting any relief effective to the 2024 cycle is closing fast. Timing will of course be impacted by how the Court might order the districts be redrawn and how much of Michigan's Constitution will be honored. *See*, Mich. Const. 1963, Art. 4, § 6(7)-(17). How long it would take the Bureau of Elections to import new House maps into the QVF will depend on how many districts must be redrawn, and on the Bureau's ability to balance that complex task with conducting elections. But unless relief is ordered quickly, the Secretary does not believe it remains possible for the voter list to be updated to implement new plans in time for the 2024 election cycle.

C. Judgment in favor of the Commission supports judgment in favor of the Secretary.

As she did before trial, the Secretary continues to take no position on the merits of Plaintiffs' claims regarding the constitutionality of the plans. The people made it clear in adopting Proposal 2 that they desired to take politicians out of the equation in drawing districts. *See, Daunt v. Benson*, 956 F.3d 396 (6th Cir. 2020) and *Daunt v. Benson*, 999 F.3d 299 (6th Cir. 2021) (discussing adoption of Proposal 2 and eligibility criteria for members of the Commission.)

But as the Secretary previously argued, since the claims against her are predicated on a determination that the plans are unconstitutional, if judgment is entered in favor of the Commission, judgment must also be entered in favor of the Secretary. (ECF No. 73, PageID.1560-63.) However, if judgment is entered in favor of the Plaintiffs, Secretary Benson will cooperate and abide by any order issued by this Court.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, Defendant Secretary of State Jocelyn Benson respectfully requests that, if this Court grants judgment in favor of the Commission, that the Court likewise grant judgment in her favor.

Respectfully submitted,

s/Erik A. Grill

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Dated: December 4, 2023

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2023, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

s/Erik A. Grill

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